

ATTORNEY GENERAL[61]

Adopted and Filed

Rule making related to assurance of voluntary compliance

The Attorney General hereby adopts Chapter 38, “Assurance of Voluntary Compliance,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code section 714.16.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code section 714.16(7).

Purpose and Summary

The purpose of this rule making is to facilitate the resolution of investigations of violations of the Iowa Consumer Fraud Act (the Act), Iowa Code section 714.16, without instituting a civil action or proceeding pursuant to Iowa Code section 714.16(7). This rule making formalizes the practice of accepting an assurance of voluntary compliance from the target of an investigation in lieu of filing a civil action and consent judgment. This rule making further states that all remedies available under the Act may be agreed to as part of an assurance, that entering into an assurance shall not be considered an admission of a violation of the Act, and that violation of an assurance shall be treated as a violation of Iowa Code section 714.16.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on January 12, 2022, as **ARC 6145C**. No public comments were received. No changes from the Notice have been made.

Adoption of Rule Making

This rule making was adopted by the Attorney General on February 16, 2022.

Fiscal Impact

This rule making has no fiscal impact to the State of Iowa.

Jobs Impact

After analysis and review of this rule making, no impact on jobs has been found.

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Attorney General for a waiver of the discretionary provisions, if any.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee’s

meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

Effective Date

This rule making will become effective on April 13, 2022.

The following rule-making action is adopted:

Adopt the following **new** 61—Chapter 38:

CHAPTER 38
ASSURANCE OF VOLUNTARY COMPLIANCE

61—38.1(714) Assurance of voluntary compliance. In any case where the attorney general has authority to institute a civil action or proceeding pursuant to Iowa Code section 714.16(7), in lieu thereof, the attorney general may accept an assurance of voluntary compliance with respect to any method, act or practice deemed to be in violation of the Iowa consumer fraud Act from any person who has engaged in, is engaging in, or was about to engage in such method, act or practice. Such assurance may, among other terms, include a stipulation for the voluntary payment by such person of the costs of investigation, the voluntary payment of a civil penalty, or an amount to be held in escrow pending the outcome of an action or as restitution to aggrieved consumers, or both. Matters thus closed may at any time be reopened by the attorney general for further proceedings in the public interest.

An assurance entered into pursuant to this rule shall not be considered an admission of a violation, provided that violation of such an assurance shall be treated as a violation of Iowa Code section 714.16, and shall be subjected to all the penalties and remedies provided therefor. A finding by a court that a violation of such assurance of voluntary compliance has occurred shall establish a prima facie case that the person subject thereto knows, or in the exercise of due care should know, that the person has in the past violated or is intentionally violating the provisions of this chapter.

This rule is intended to implement Iowa Code section 714.16(7).

[Filed 2/16/22, effective 4/13/22]

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EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 3/9/22.